IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Misc.Petition No. 8 of 2003

The Administrator of the
Specified Undertaking of Unit
Trust of India ..Petitioners

vs.

1. Indore Steel & Iron Mills
Ltd. and anr. ..Respondents.

Mr.G.S.Hegade with Mr.Aditya Khanna i/b M/s
A.R.Bhole & Co. for petitioners.
None for respondent no.1.
Ms.Vijaya Gaikwad i/b M.K.Ambalal & Co. for
respondent no.2.

CORAM: S.U.KAMDAR J.
24th January,2005

P.C.

1. The present proceedings are filed under sec.19-B of the Unit Trust of India Act, 1963. Some of the material facts of the present case briefly stated are as under:

2. Pursuant to the application made by the respondent company for financial assistance the respondent company was granted long term working capital by way of finance through the subscription of secured redeemable non convertible debentures of the face value of Rs.100/- each aggregating to the nominal value of Rs.50 lacs. In pursuance thereof the secured debentures were allotted and the same

were fully subscribed. Respondent no.1 allotted fully paid up debentures to the petitioner on 27th June, 1991. On 27th December, 1991, common subscription agreement was executed by and between the petitioner and respondent no.1 company. Under the terms and conditions of the said agreement, it was inter alia provided that the said debentures shall be redeemed in five equal annual instalments commencing on the expiry of 5th year from the date of allotment and ending on the expiry of 9th years from the date of allotment. The aforesaid obligation of the company to redeem the said debentures is provided in clause 1.7 of the said common subscription agreement which reads as under:

> 1.7 REDEMPTION PERIOD:
>
> The Debentures shall be redeemed in five equal annual instalments commencing on the expiry of the 5th year from allotment and ending on the expiry of the 9th years from the date of allotment.
>
> The Company shall pay a premium of 5% of the face value of the said Debentures on the expiry of the 7th year from the date of allotment together with the instalment of

redemption payable on the expiry of the 7th year from the date of allotment.

ii) The Debenture holders may, in suitable circumstances, revise, vary or postpone the redemption of the principal amounts of the Debentures or the balance outstanding for the time being or any instalment(s)s of the said principal amounts of the Debentures or any part thereof upon such terms and conditions as may be decided by the Debentureholders.

iii) In the event of any default in the payment of principal, any interest, commitment fees, liquidated damages, postponement, if any, allowed by the Debentureholders shall be at the rate of interest as may be stipulated by the Lead Institution at the time of postponement."

3. It is the case of the petitioners that inspite of the said period having been completed by efflux of time respondent no.1 company has failed to redeem the said debentures amount. Thus, respondent no.1 has committed default in complying with its obligations under the common subscription

agreement.

4. Originally the petition was filed by the Unit Trust of India, a statutory Corporation established under Unit Trust of India Act, 1963. Subsequently by amending Act known as "The Unit Trust of India (Transfer of Undertakaing and Repeal) Act, 2002, the petitioner entity was changed to the Administrator of the Specified Undertaking of Unit Trust of India. The petitioners have carried out the amendment bringing the newly constituted entity as petitioners in the present case. Under the provisions of the said 2002 Act, sub-section (4) of Section 5 interalia permit the newly constituted entity to continue the proceedings which were pending immediately before the appointed day. The said sub-section (4) of section 5 of the said Act reads as under:

> (4)Any proceedings or cause of action pending or existing immediately before the appointed day by or against the Trust may, as from the appointed day, be continued and enforced by or against the specified company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested by virtue of this Act

as it might have been enforced by or against the Trust, if this Act had not been promulgated and shall cease to be enforceable by or against the Trust."

5. In view of the provisions of the said Repeal Act, 2002 the present petition can be proceeded in so far as the obligations of respondent no.1 company are concerned under sec.19-B of the Unit Trust of India Act, 1963.

6. The petition has been served on respondent no.1 and affidavit of service dated 16th January, 2004, inter alia providing there the service by the petitioner is taken on record and marked "X" for identification. Inspite of service of the petition none appears for respondent no.1. Respondent no.2 is present and submits to the orders of the Court.

7. Under the provisions of sec.19-B of the Act, it is categorically contemplated that the company can maintain the petition for recovery of the amount lent and advanced as and by way of loan or advance or if the borrower has committed obligation or otherwise failed to comply with the terms of the agreement which has been executed by and between the borrowers in the present case respondent no.1l

herein with the petitioner. In the present case there is common subscription agreement for the secured debentures. Under the terms and conditions of the said agreement the said debentures were required to be redeemed during the period prescribed under clause 1.7 of the said agreement. Admittedly, respondent no.1 has committed breach of the obligations contained in clause 1.7 of the said agreement. The company has failed to redeem the debentures. Thus, the company is indebted to the petitioner herein towards the amount payable as and by way of redemption of the secured debentures. The petitioner has filed the affidavit dated 20th October, 2004 setting out the statement of account indicating that there is outstanding amount of Rs.58,95,744 as on 19th October, 2004. In view of the aforesaid I make the present petition absolute in terms of prayer clauses (a) and (b) of the petition. Petition is disposed of accordingly. There will be no order as to costs.